

## UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6  
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AUG 12 2002

In re Application of  
Badylak, et al.  
Application No. 10/044,031  
Filed: January 11, 2002  
Docket No.: 3220-69262  
For: PURIFIED SUBMUCOSA GRAFT  
MATERIAL

OFFICE OF PETITIONS  
DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed June 7, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed January 11, 2002 without an executed oath or declaration and naming Stephen F. Badylak, Michael C. Hiles, and Steve A. Kahn as joint inventors. Accordingly, on January 31, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirement (1) stated above. The petition lacks sufficient evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration.

Petitioner states that on February 22, 2002, a copy of the application and a declaration were sent to Kenneth Gandy, counsel representing Cook Biotech, Inc., the employer of inventor Michael C. Hiles. A second letter was sent to Kenneth Gandy on March 20, 2002.

Petitioner is advised that before a refusal can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers to the non-signing inventor. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d).

While petitioner has forwarded a copy of the application papers to an attorney known to be representing the inventor's employer, petitioner has failed to establish that said attorney also represents the inventor. Accordingly, petitioner has not established that the inventor or the inventor's legal representative received a copy of the application papers and thereafter refused to execute the declaration.

Any renewed petition must be supported by evidence that the inventor or the inventor's known legal representative was presented with a copy of the application papers. In particular, the renewed petition should set forth the manner in which the application papers were presented to the non-signing inventor or the inventor's legal representative. Petitioner may wish to provide the Office with copies of dated cover letters and, if available, copies of mailing receipts as evidence that the non-signing inventor or the inventor's legal representative was presented with a copy of the application papers. If, after having been presented with the application papers, an oral refusal is made, this fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusal was made. Any written refusal to execute the oath or declaration by the inventor or the inventor's legal representative should likewise be submitted. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.

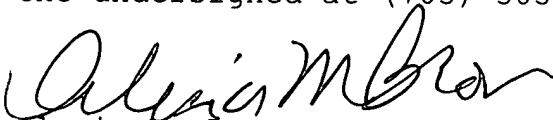
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



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Office of the Deputy Commissioner